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In re Application of  
Edgar M. Fitzsimons et al  
Application No. 09/932,517  
Filed: August 17, 2001  
Attorney Docket No. 4301-4000

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: OFFICE OF PETITIONS  
: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(6)  
:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed October 29, 2002, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of a prior-filed provisional application.

The petition is **Granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(i) and the date the claim was filed was unintentional; and
- (3) the reference to the prior-filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on August 17, 2001 within twelve months of the filing date of the prior-filed provisional application,

Application No. 60/241,661, which was filed on October 20, 2000, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. § 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/241,661 is granted as of the date of filing the petition.

A corrected filing receipt which includes the priority claim to the prior-filed provisional application accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The application is being forwarded to Technology Center AU 2673 for processing the amendment filed October 29, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application, Application No. 60/241,661, filed on October 20, 2000.



Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy